

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBERT LEWIS,)	
)	
Plaintiff,)	
)	
v.)	
)	1:17-cv-964
HOKE COUNTY, HUBERT PETERKIN,)	
TIMOTHY RUGG, SAMUEL MORANT,)	
TIMOTHY KAVANAUGH, STANLEY)	
DAVIS, JOHN DOE #1, JOHN DOE)	
#2, JOHN DOE #3, JOHN DOE #4,)	
and JOHN DOE #5,)	
)	
Defendants.)	

ORDER

This matter is before the court for review of the Order and Recommendation ("Recommendation") filed on June 12, 2024, by the United States Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 44.) In the Magistrate Judge's Order and Recommendation, the introductory paragraph states: "For the following reasons, the undersigned will grant in part, deny in part Plaintiff's service-related motion, (Doc. 13), deny Plaintiff's motion for copies, (Doc. 20), deny Plaintiff's motion to amend his Complaint, (Doc. 21), and recommend granting in part, denying in part the Moving Defendants' motion to dismiss, (Doc. 14)." (See Doc. 44 at 1.) Upon review of the Magistrate Judge's analysis and conclusion (see id. at 12, 30,

31, 32), it is apparent that a recommended ruling, not an order, was issued for Plaintiff's service-related motion, (Doc. 13), and motion to amend the complaint, (Doc. 21). Furthermore, because John Does 1-5 have not yet been served and the time for doing so has long passed, the Magistrate Judge recommends that the five John Doe Defendants be dismissed from this action, (see Doc. 44 at 12).

Plaintiff filed timely objections to the Recommendation, and Defendants Hoke, Peterkin, and Kavanaugh responded to the objections. (Docs. 49, 52.)

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the portions of the Recommendation to which objections were made and has made a de novo determination which is in accord with the Magistrate

Judge's Recommendation.¹ This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 44), is **ADOPTED. IT IS FURTHER ORDERED** that Plaintiff's "Motion Requesting the Court to Order Disclosure of the Name and Address of all Unserved Defendant(s) in the Present Case at Bar," (Doc. 13), is **GRANTED IN PART** as to Timothy Rugg, Samuel Morant, and Stanley Davis,² and, **DENIED IN PART** as to John Does 1-5 for the reasons cited in the Recommendation.

IT IS FURTHER ORDERED that Plaintiff's "Motion to Amend Complaint Pursuant to Rule 15(a) Fed. R. Civ. P.," (Doc. 21), is **DENIED.**

IT IS FURTHER ORDERED that Defendants Hoke County, Sheriff Peterkin, and Timothy Kavanaugh's Motion to Dismiss, (Doc. 14),

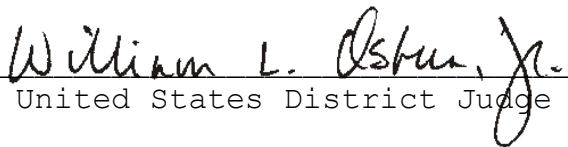
¹ Plaintiff objects to the Magistrate Judge's description of the state court criminal proceedings. This court observes that the description is helpful and strengthens Plaintiff's claim but in any event is harmless. Furthermore, contrary to Plaintiff's objection, the Magistrate Judge did not hold that Plaintiff is limited to nominal damages, only that damages are limited to the invasion of privacy claim which may be nominal. (Doc. 44 at 27.)

² In accordance with the Magistrate Judge's Order and Recommendation, the record reflects that on June 18, 2024, counsel for Defendants Hoke County, Sheriff Hubert Peterkin, and Deputy Timothy Kavanaugh filed a Sealed Response to Court's Order Dated June 12, 2024 [D.E. #44] Regarding Last Known Addresses, (Doc. 46).

is **GRANTED IN PART** and **DENIED IN PART**. All claims against Hoke County and Sheriff Peterkin are **DISMISSED**. The only claim that shall proceed against Defendant Kavanaugh is a claim regarding the search and seizure of Plaintiff's curtilage. (See Doc. 44 at 32 N.13.)

IT IS FURTHER ORDERED that unserved Defendants John Doe #1, John Doe #2, John Doe #3, John Doe #4, and John Doe #5 are **DISMISSED WITHOUT PREJUDICE**.

This the 21st day of November, 2024.


United States District Judge